IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:4-11-2006

CORAM

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

C.R.P.PD.Nos.1505 and 1506 of 2006

M.S.Mani @ M. Subramani ... Petitioner/Respondent in CRP in 1505 and 1506/06

Versus

K.Shyamala ... Respondent/Petitioner in CRP NO. 1505/06 and 1506/06

Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.07.2005 and 9.5.2006 made in I.A.Nos.6 and 7 of 2005 in F.C.O.P.No.162 of 2004 on the file of the Family Court, Salem respectively.

For Petitioner :Mr.D.Shivakumaran

ORDER

Aggrieved over the the fair and decreetal order dated 11.07.2005 and 9.5.2006 made in I.A.Nos.6 and 7 of 2005 in F.C.O.P.No.162 of 2004 on the file of the Family Court, Salem, these civil revision petitions are filed respectively.

2.The brief facts of the case are as follows:

The respondent filed F.C.O.P.No.262 of 2004 on the file of the Family Court, Salem against the petitioner to dissolve the marriage between the petitioner and the respondent dated 21.2.2000. She also filed I.A.Nos.6 and 7 of 2006 for interim maintenance and return of property. Considering the financial position of both and other facts of the case the learned Family Court Judge, Salem allowed the I.A.No.6 of 2006 on 11.7.2005 with a direction to the husband to pay maintenance of a sum of Rs.2000/- per month and a sum of Rs.1000/- per month each to the respondent and her minor daughter respectively from the date of the petition till the disposal of the F.C.O.P.No.262 of 2004 and further directed to pay Rs.5000/- towards litigation expenses. In

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I.A.No.7 of 2006 inspite of many adjournments were given the respondent had not complied the order passed in I.A.No.6 of 2005 dated 11.7.2005 and therefore the Family Judge, Salem struck down the defence of the petitioner herein under Section 151 C.P.C. and allowed the said petition.

3.Aggrieved over the same these civil revision petitions have been filed by the petitioner herein.

4.Mr.R.G.Annamalai, the learned counsel appearing for the revision petitioner would contend that the petitioner is not earning as alleged by the petitioner since he is a labour in plumbing contract and in regard to the other source of income no proof has been filed by the respondent. He further contends that the respondent with regard to gold jewels as referred in her petition no proof has been filed by the respondent. The respondent is a divorcee and she has got substantial amount in lumpsum from the previous husband. Due to atrocities on the part of the respondent the petitioner has lost his business and become pauper.

5.From the order of the learned Family Court Judge, Salem it is seen that according to the respondent the petitioner is a plumbing contractor and earning Rs.20000/- and he is also earning Rs.12000/- per month as rental income through his immovable property.

6.In a reported decision A.I.R. 1994 NOC at page 61 Rajasthan (Anil Kumar vs. Smt.Lakshmi Devi) the Honourable High Court of Rajasthan held as follows:-

> "Hindu Marriage Act (1955), S.24- Maintenance to wife - Pendency of proceedings u/s.24 - question about income of husband - proof - Onus lies upon husband to disclose his own income."

7.Based on the above said rulings, it emerges that the husband has to produce relevant documents and materials to prove his income failing which the allegations and averments made by the wife has to be taken into consideration for proof of income of the husband. It is also seen from the order of the Family Judge, Salem that the petitioner has agreed to return the respondent's 10 sovereigns of jewels valued Rs.50000/- in four instalments and he had paid only Rs.5000/-. The respondent is not having any source of income and she is living with the help of her parents. Inspite of many adjournment the petitioner has not complied with the order passed by the Family Judge, Salem dated 11.7.2005 and hence in I.A.No.7 of 2005 the defence of the petitioner had been struck down and the petition was dismissed.

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8.Considering the facts and circumstances of the case, I do not find any reason to interfere with the orders of the Family Judge, Salem. In the result these civil revision petitions are dismissed. No costs. Consequently the connected M.P.No.1 of 2006 is also dismissed.

vk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

The Family Court, Salem.

+one cc to Mr.D. Shivakumar, Advocat sr no. 52616

NTK(CO)
NM(01.12.2006)

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